

REMARKS

The Examiner is requested to reconsider the above-captioned application in light of the following Remarks.

No claims have been amended in this Response. Thus, Claims 10, 21, 22, 24, and 34-41 remain pending and under consideration. Claims 2-4, 6, 8, 9, 11-15, 17-20, and 25-33 remain pending but withdrawn from consideration.

Nash Does Not Teach or Suggest The Recited Structure

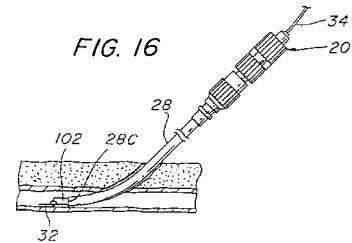
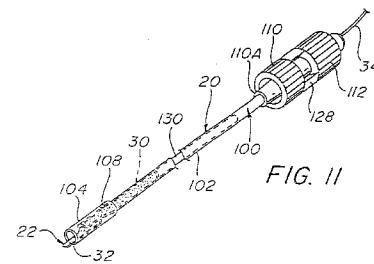
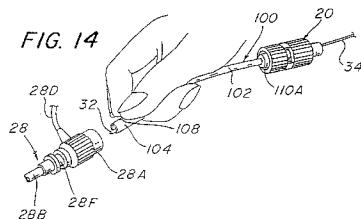
The Examiner rejected all of the claims under 37 C.F.R. § 102(b) or 37 C.F.R. § 103(a) as being unpatentable over U.S. Patent No. 6,007,563 to Nash. Applicants respectfully traverse the rejection, and contend that Nash does not teach or suggest the limitations of the claims, and further that the Examiner has unreasonably interpreted the claims.

Nash discloses a device in which an anchor member 32 is held within a rigid bypass tube 104 that is attached to the distal end of an elongated tube 102 (see Fig. 11; col. 7, ll. 41-56). In use, tubes 104 and 102 are pushed through a valve 28A at the proximal end of a sheath 28 (see Fig. 14; col. 11, ll. 13-14), and

then advanced until the anchor member 32 and distal end of the tube 102 are pushed out of the distal end of the sheath 28 (see Fig. 16; col. 11, ll. 17-25). Eventually the tube

102 and sheath 28 are drawn proximally away and the anchor member 32 is pulled by a filament positioning member 34 into engagement with the inside of the vessel to close the puncture from the inside (see col. 12; ll. 1-55).

Claim 21 recites a device comprising, *inter alia*, an elongate body comprising a first lumen having a first distal opening and a second lumen having a second distal opening, a wound cover member releasably connected to the elongate body at the first distal opening, the first distal opening being permanently maintained at a position distal of the second distal opening, and the first and second lumens do not communicate with one another, and when the wound cover



Application No.: 10/614,650
Filing Date: July 7, 2003

member is released from the first distal opening, the wound cover member is wholly disconnected from the device.

These limitations of Claim 21 are not taught or suggested by Nash. For example, Nash's anchor member 32 is not connected to the distal end of the tube 102. Rather, the tube 102 only pushes distally on the anchor member. Also, as will be discussed in more detail below, Nash's tube 102 is only temporarily distal of the sheath 28. Further, during the time when Nash's tube 102 is within the sheath 28, the tube 102 and sheath 28 clearly can communicate with one another. Still further, Nash's anchor 32 is still connected to the Nash device by the filament 34 (see col. 12, ll. 2-13), even after the tube 102 and sheath 28 have been removed from any contact with the anchor 32.

Since Nash does not teach or suggest all of the limitations of Claim 21, Applicants respectfully request that the Examiner withdraw the rejection of this claim and the claims that depend therefrom.

Examiner Unreasonably Interprets Word "Permanently"

Of particular interest in the Office Action is the Examiner's treatment of the word "permanently" in Claim 21. The Examiner noted that the word "permanently" is not in the specification. The appropriateness of using this word in Claim 21 was addressed convincingly by Applicants in the Response filed October 1, 2007. In the outstanding Office Action the Examiner interprets the word "permanently" in an unreasonable manner that is opposite its conventional meaning.

In the Office Action, the Examiner contends that the distal end of Nash's tube 102 is "permanently maintained at a position distal of the [sheath 28] distal opening . . . during the course of placement of the wound closure member 32." (Office Action, pp. 3-4). Applicants submit that this is not a reasonable interpretation or use of the word "permanently".

Submitted herewith are pages from *Webster's Encyclopedic Unabridged Dictionary of the English Language*. The primary dictionary definition of "permanent" is, "existing perpetually; everlasting, esp. without significant change." Conversely, the primary dictionary of "temporary" is "lasting, existing, serving, or effective for a time only; not permanent." Further, "permanent" is defined as the antonym of "temporary".

Application No.: 10/614,650
Filing Date: July 7, 2003

As noted above, in the Nash system the tube 102 is first totally unattached to the sheath 28, then is advanced through the proximal end of the sheath and through the entire length of the sheath until the tube's distal end extends out of the sheath. The tube 102 is again drawn back into the sheath 28 upon deployment of the anchor member 32.

In Nash's structure, the distal end of the tube 102 can be both distal and proximal of the sheath 28. And the distal end of the tube 102 is distal of the sheath 28 for only part of the process of use, which clearly meets the definition of "temporary" as "for a time only". Reason dictates that it is impossible for a thing to be "permanently" in a position for only a specified, limited time; such a situation is the definition of "temporary", which is the antonym of permanent.

Since the Examiner has interpreted "permanently" to apply to a situation that is clearly temporary, the Examiner's interpretation of the claim is unreasonable, and the Examiner's characterization of Nash as teaching the claim limitations is inappropriate, and any rejection based on this interpretation should be withdrawn.

Dependent Claims Recite Additional Patentable Subject Matter

As noted above, since Claim 21 is in condition for allowance, the claims that depend therefrom are also in condition for allowance. Nevertheless, Applicants contend that these claims recite additional patentable subject matter. For example, as discussed above, Nash's tube 102 is moved relative to the sheath 28 when the tube is advanced distally through the sheath. Thus, Nash's teachings are specifically opposite the limitations of Claim 10, which recites first and second portions that are "rigidly connected to one another so as to always move as a single elongate unit."

Withdrawn Claims Should Be Returned to Consideration

Claims 2-4, 6, 8, 9, 11-15, 17-20 and 25-33 currently stand withdrawn from consideration as being directed to a nonelected invention. Each of these claims depends from independent Claim 21, which Applicants contend is now in condition for allowance. Since Claim 21 is allowable, Applicants respectfully request that the Examiner return these claims into consideration, as they are now in condition for allowance as well.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this

Application No.: 10/614,650
Filing Date: July 7, 2003

application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

Docket No.	Serial No.	Title	Filed
LOMAU.159A	10/935,415	DRESSING DELIVERY SYSTEM FOR INTERNAL WOUNDS	09/07/04

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 15, 2009

By: _____/Glen L Nuttall/
Glen L. Nuttall
Registration No. 46,188
Attorney of Record
Customer No. 20,995
(949) 760-0404

7114379
051509